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NO. 90-1113

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY ANDERSON,

Petitioner,

v.

CHRYSLER MOTORS CORPORATION,
STOCKTON DODGE, INCORPORATED,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

# BRIEF OF RESPONDENT CHRYSLER MOTORS CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## TABLE OF CONTENTS


**STATEMENT OF THE CASE** . . . . . 1

Initial Action In State Court . . . . . 1

Action in the Federal District Court . 2

Appellate Court Affirmance of the District Court . . . . . 6

**ARGUMENT** . . . . . 7

I. MR. ANDERSON'S PETITION FAILS TO SET FORTH ANY JUSTICIABLE ISSUE FOR REVIEW ON CERTIORARI. 7

II. MR. ANDERSON'S PETITION CONTAINS MATTERS IMPROPERLY PLACED BEFORE THE COURT FOR REVIEW . . . . . 11

III. CONCLUSION . . . . . 14

## TABLE OF AUTHORITIES

Preemption Devices v. Minn. Min. & Mfg. Co. (Fed. Cir. 1984) 732 F.2d 903, 907 . . 12

STATUTES:

Magnuson-Moss Warranty Act, 15 U.S.C.A. §§2301, et. seq. (West 1982) . . . . . 3

28 U.S.C.A. §1332 (West 1966 & Supp. 1980). 3

28 U.S.C.A. § 1827 (West Supp. 1990) . . . . . 7, 13, 14

OTHER:

Federal Rule of Civil Procedure 83 . . 9, 10

Supreme Court Rule 10.1(a) . . . . . 9

Ninth Circuit Rule 34-4 . . . . . 7

Eastern District of California, Rule 230 . . . . . 8, 10

Petitioner HENRY ANDERSON has filed his Petition for Writ of Certiorari in this Court seeking review on certiorari of a ruling by the Ninth Circuit Court of Appeals. The ruling affirms the dismissal of Mr. ANDERSON's claim by the United States District Court for the Eastern District of California, on grounds of lack of subject matter jurisdiction. Respondent CHRYSLER MOTORS CORPORATION ("CHRYSLER") hereby respectfully submits its Brief in Opposition, on grounds that Mr. ANDERSON has not set forth within his Petition an issue amenable to review on certiorari and sufficient to place in issue the ruling of the Ninth Circuit Court of Appeals; in addition, CHRYSLER seeks to point out to the Court certain misstatements set forth in the Petition.

## STATEMENT OF THE CASE

### Initial Action In State Court

This action arises out of Mr. ANDERSON's purchase of a 1987 Dodge pickup truck from Stockton Dodge on or about April 29, 1987. On

June 17, 1988, Mr. Anderson, in propria persona, filed a Complaint in the Superior Court of California for the County of Calaveras, Action Number 15146.

Thereafter, upon motion of Defendant Stockton Dodge, the Superior Court for the County of Calaveras ordered a change in venue of the action to San Joaquin County. Plaintiff petitioned, by Writ of Mandamus, the Court's Order. The Court of Appeal of the State of California for the Third District subsequently denied this Petition. To date, Plaintiff has failed to pay the necessary transfer fees required to transfer the action to San Joaquin County.

Action in the Federal District Court

On January 19, 1989, Petitioner filed his original Complaint in the United States District Court for the Eastern District of California. Thereafter, on April 13, 1989, Appellant filed his Amended Complaint.

On April 18, 1989, CHRYSLER filed in the District Court its Motion to Dismiss

Plaintiff's Amended Complaint for Lack of Subject Matter Jurisdiction. In this Motion, CHRYSLER contested subject matter jurisdiction on the ground that Plaintiff's Amended Complaint failed to establish subject matter jurisdiction under either the Magnuson-Moss Warranty Act, 15 U.S.C.A. §§2301, et. seq. (West 1982), or under traditional rules of diversity jurisdiction, 28 U.S.C.A. §1332 (West 1966 & Supp. 1990). Additionally, CHRYSLER requested the District Court to abstain from exercising its jurisdiction on the grounds that a virtually identical action was currently pending in the State Court. On May 5, 1989, Appellee Stockton Dodge filed Motions to Dismiss and to Strike Portions of Anderson's Amended Complaint. The Motions of Stockton Dodge were premised on virtually identical grounds as CHRYSLER's Motion to Dismiss, with the exception that Stockton Dodge did not request the District Court to abstain from exercising jurisdiction.

In response to the Motions of CHRYSLER

and Stockton Dodge, Petitioner filed three Motions entitled, to wit:

> Plaintiff's Notice of Motion and Motion to Strike the Absurd Motions of Defendant Stockton Dodge's Incompetent Lawyer, William F. Horsey, dated 6/24/89;
>
> Notice of Motion and Motion to Strike Defendant Chrysler Motors Corporation's Motions to Dismiss, Abstain and For More Definite Statement. Also Rebuttal to Defendant's Motions;
>
> Notice of Motion and Motion to Strike the Defense Motion to Dismiss and the Incompetent Declaration of W. F. Horsey with Memorandum of Points and Authorities and Sworn Affidavit of Henry Anderson.

Additionally, Petitioner filed a Motion entitled "Notice of Motion and Motion for Production of Exact, Complete Certified Copies of the Warranty Provisions and Terms of the Truck." Pursuant to this Motion, Appellant sought to compel production of certified copies of warranty terms. Additionally, Petitioner sought from Stockton Dodge copies of the sale invoice for the subject vehicle, the name, address and identity of a Stockton Dodge salesman, and other documents relative

to the warranty repairs performed on the subject vehicle.

On June 5, 1989, the District Court heard oral argument from each of the parties with respect to the above-referenced Motions. Appellant Henry Anderson appeared in pro per and was afforded the opportunity to present oral argument in opposition to Respondent CHRYSLER and Stockton Dodge's Motions. Additionally, Anderson was afforded an opportunity to orally argue his position with respect to the affirmative motions presented to the Court. Following oral argument, the District Court took all matters under submission and, thereafter, granted the Motions of Respondent CHRYSLER and Stockton Dodge for Dismissal for Lack of Subject Matter Jurisdiction.[1]

The District Court concurrently issued its Decision and Order Denying Plaintiff's Motion for Production of Certified Copies of

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[1] The District Court's Decision Order in this regard was dated June 16, 1989.

Documents. Pursuant to this Order, the Court found that the Plaintiff's Motion was untimely, the Motion having been filed on May 24, 1989, only two weeks before the June 5, 1989 hearing date. In so ruling, the Court relied upon E. Dist. Cal. Rule 230[2], providing that motions shall be set for hearing "not less than 28 days after service and filing of the motion . . ."

**Appellate Court**
**Affirmance of the District Court**

Thereafter, Petitioner filed his Appeal in the United States Court of Appeals for the Ninth Circuit, essentially contending that the District Court erred in dismissing Mr. ANDERSON's claim on the grounds of lack of subject matter jurisdiction and in denying Mr. ANDERSON's Motion for Production of Documents. The Appellate Court affirmed the District Court in all respects in its Memorandum Decision filed August, 1990.

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[2] E. Dist. Cal. Rule 230 is alternatively referred to herein as "Local Rule 230" or the "Local Rule."

The Appellate Court determined the matter without oral argument pursuant to Fed. R. Civ. P. 34(a) and Ninth Cir. R. 34-4. The Court's decision was as follows:

> We affirm the district court's decisions. We conclude (1) the district court did not err in dismissing Anderson's claim for lack of subject matter jurisdiction; (2) Anderson was not entitled to an interpreter under 28 U.S.C. § 1827(d)(1); and (3) the district court did not err in denying Anderson's motions to produce documents. AFFIRMED.

**ARGUMENT**

**I.**

**MR. ANDERSON'S PETITION FAILS TO SET FORTH ANY JUSTICIABLE ISSUE FOR REVIEW ON CERTIORARI**

In the first section of Mr. ANDERSON'S Petition, Questions Presented for Review, he sets forth twelve purported issues for review on certiorari. When the issues are read in conjunction with the arguments set forth in the Petition, however, it is apparent that the gravamen of Mr. ANDERSON's complaint is that the District Court, in ruling upon Defendants' Motions to Dismiss and upon Plaintiff's Motion

for Production of Documents, did not consider the facts underlying Plaintiff's claim and did not issue a ruling on the merits.

In ruling upon the Motions to dismiss of both Petitioner CHRYSLER and STOCKTON DODGE, the District Court expressly found that no subject matter jurisdiction existed in the District Court. The Ninth Circuit Court of Appeals affirmed the District Court's ruling in this regard. Nowhere in Mr. ANDERSON'S Petition has the propriety of the District Court's ruling on subject matter jurisdiction been questioned. As Mr. ANDERSON has not presented any question for review in this Court regarding the District Court and Appellate Court treatment of this basic and fundamental ruling, it is respectfully contended that no judiciable issue has been presented.

Mr. ANDERSON'S Petition does appear to present a challenge to Local Rule 230 of the District Court for the Eastern District of California, which rule provides that motions

shall be served and filed not less than 28 days (for personal service) or 31 days (for service by mail) prior to the date of hearing on the motion.[3] The District Court relied upon this Local Rule in denying Plaintiff's Motion to Produce. Mr. ANDERSON apparently contends that the District Court's reliance on the Local Rule violated his due process rights and constituted a departure from the accepted and usual course of judicial proceedings. (Supreme Court Rule 10.1(a).) Mr. ANDERSON apparently petitions this Court to correct the purported departure through exercise of the Court's power of supervisory review. Id. Petitioner argues that the District Court has improperly promulgated time frames for notice of civil law and motion matters. He bases his argument on the fact that Federal Rule of Civil Procedure 6(d) provides for a different time frame for service and filing of notice of motion.

Federal Rule of Civil Procedure 83,

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[3] Local Rule 230(a).

however, empowers a District Court to establish and amend rules governing its practice not inconsistent with the Federal Rules of Civil Procedure. Local Rule 230 is a proper exercise of Fed. R. Civ. P. 83 and not inconsistent with the Federal Rules. Fed. R. Civ. P. 6(d) states in relevant part that:

> A written motion, other than one which may be heard ex parte and notice of the hearing shall be served not later than five days before the time frame specified for the hearing, unless a different period is fixed by these rules or by order of the court. (Emphasis added.)

Clearly, the Federal Rule contemplates and authorizes establishment by the District Court of a different or further rule establishing an earlier time frame for filing and service of the motion.

Moreover, assuming arguendo that the District Court improperly relied upon Local Rule 230 in denying Plaintiff's discovery Motion, that Court's determination of lack of subject matter jurisdiction, affirmed by the Appellate Court, renders the issue moot.

## II.

## MR. ANDERSON'S PETITION CONTAINS MATTERS IMPROPERLY PLACED BEFORE THE COURT FOR REVIEW

Within Mr. ANDERSON's Petition, he sets forth facts and occurrences pertaining to his underlying claims against Respondents. In particular, Mr. ANDERSON argues the facts and circumstances surrounding the purchase of his vehicle and subsequent problems associated with it. These arguments are irrelevant to the issues for review and find no support in the record.

In addition, the Petition sets forth Mr. ANDERSON's allegations of fraud and collusion on the part of defense counsel and the District Court Judge. In this regard, the Petition contends that the District Court Judge's reliance upon the local rule constituted judicial misconduct; the Petition further contends that defense counsel's citation of the Local Rule to the District Court constituted conspiracy with the District Court Judge to deny rights to the Plaintiff.

With all due respect to Petitioner, CHRYSLER must insist that these allegations constitute improper and inflammatory misstatements of fact and have no basis in the record. It is respectfully submitted that Mr. ANDERSON's assertions and personal attacks have no bearing on any judiciable issue. The inappropriateness of this type of ad hominem argument was noted in Preemption Devices v. Minn. Min. & Mfg. Co. (Fed. Cir. 1984) 732 F.2d 903, 907, wherein the Court commented that:

> It is regrettable that we should have to remind counsel that attacking the judge as lacking skill or understanding or legal competence, as has repeatedly been done in this case, is improper argument and wholly ineffective, if not counter-productive. It has not tendency to prove anything.

Mr. ANDERSON also mistakenly states within his Petition that the District Court entertained no oral argument in connection with Plaintiff's Motion for Production of Certified Documents. In point of fact, however, the District Court did indeed hear

oral argument on Plaintiff's Motions on June 5, 1989, in conjunction with oral argument on the Motions to Dismiss of both Defendants. Thereafter, the District Court issued its Decision and Order Re Motion for Production of Certified Copies, dated June 16, 1989. This Order reflects the presentation of oral arguments of the parties on the matter on the date of the hearing.

Finally, Mr. ANDERSON's Petition contains a one-sentence contention that the District Court improperly failed to apply the provisions of 28 U.S.C.A. § 1827 (West Supp. 1990). The provisions of this statute establish a mechanism whereby litigants who speak a language other than English or suffer from hearing impairment may obtain the services of an interpreter to facilitate their understanding of the court proceedings. The record reveals that Mr. ANDERSON made no motion for the appointment of an interpreter and the District Court made no assessment that an interpreter was required. The Court of

Appeals determined that Mr. ANDERSON was not entitled to an interpreter under 28 U.S.C.A. § 1827(d)(1). Mr. ANDERSON's Petition does not challenge the propriety of the Court of Appeals determination, nor does the Petition offer any argument or authority for his conclusory statement that the District Court action resulted in a denial of rights. Accordingly, it is respectfully submitted that Petitioner's assertion with respect to 28 U.S.C.A. § 1827 also fails to present a proper issue for review in this court on certiorari.

## III.

## CONCLUSION

A reading of the Petition of Writ for Certiorari reveals that Petitioner has failed to set forth any judiciable issue for review on certiorari. Rather, Mr. ANDERSON's arguments, in the main, challenge the fact that the District Court failed to consider the merits of his underlying claim in dismissing the action for lack of subject matter jurisdiction; similarly, Mr. Anderson

challenges the Appellate Court's non-consideration of the merits in affirming the District Court. Within his Petition, Mr. Anderson has not properly set forth facts or arguments or legal authority sufficient to place in issue the District Court's granting of Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction nor the affirmance of this ruling by the Ninth Circuit Court of Appeals. Accordingly, Respondent CHRYSLER respectfully requests that Mr. ANDERSON's Petition for Writ of Certiorari be denied.

Dated: January 28, 1991.

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